

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:11cv227

RONNIE BAILEY,)
)
Plaintiff,)
)
vs.)
)
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
)
Defendant.)
)

ORDER OF REMAND

THIS MATTER is before the Court on the Plaintiff's Motion for Judgment on the Pleadings [Doc. 12] and the Defendant's Motion for Summary Judgment [Doc. 14].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell was designated to consider these motions and to submit recommendations for their disposition.

On May 29, 2012, the Magistrate Judge filed a Memorandum and Recommendation in which he recommended granting the Plaintiff's motion, reversing the Commissioner's decision and remanding this matter for further

administrative action. [Doc. 17]. He recommended that the Defendant's Motion for Summary Judgment be denied. [Id.]. The parties were advised that any objections to the Magistrate Judge's conclusions and recommendations were to be filed in writing within fourteen days of service of the Recommendation and that failure to file Objections to the Memorandum and Recommendation would preclude the parties from raising any objection on appeal. [Id., at 15]. The period within which to file objections expired on June 15, 2012 and no written Objections to the Memorandum and Recommendation have been filed by either party.

Having conducted a careful review, the Court concludes that the Magistrate Judge's recommendation is supported by the record and the law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation that the decision be reversed and that this matter be remanded. Although the Plaintiff did not specifically seek an order awarding immediate benefits, such relief was sought in the Complaint. [Doc. 1]. As a result, to the extent that such relief was implicitly requested in the Motion for Judgment on the Pleadings, it will be denied.

ORDER

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion for Judgment on the Pleadings [Doc. 12] is hereby **GRANTED** in part to the extent that the Plaintiff seeks reversal of the Commissioner's decision denying him disability benefits and remand for further proceedings. To the extent that the Plaintiff seeks an immediate award of benefits, the Plaintiff's Motion is hereby **DENIED**.

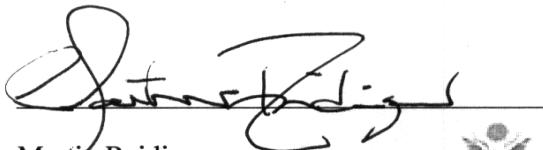
IT IS FURTHER ORDERED that the Defendant's Motion for Summary Judgment [Doc. 14] is hereby **DENIED**.

IT IS FURTHER ORDERED that pursuant to this Court's authority to enter judgment affirming, modifying or reversing the decision of the Commissioner pursuant to Sentence Four of 42 U.S.C. §405(g), the decision of the Commissioner is hereby **REVERSED** and this case is hereby **REMANDED** to the Commissioner for further administrative action as follows:

(1) upon remand, the case shall be assigned to a new Administrative Law Judge (ALJ) who shall conduct a new hearing; (2) the ALJ shall make a credibility determination as to the Plaintiff; (3) the ALJ shall assess the Plaintiff's residual functional capacity; and (4) if necessary, the ALJ shall consider the testimony of the vocational expert.

The Clerk of Court is instructed to enter Judgment simultaneously
herewith.

Signed: June 26, 2012


Martin Reidinger
United States District Judge

